IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.570 OF 2005
IN
SECOND APPEAL NO.124 OF 2000

Nivrutti Anandrao Padale .. Applicant
Versus
Sharadabai Manohar Phalke since
deceased through LR. .. Respondent

Mr.Pethe h/f R.G.Ketkar for applicant
Mr.Pravin Mane i/b Uday Warunjikar for respondent

CORAM : P.V.KAKADE, J.

DATE : 19TH AUGUST 2005

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. This is an application filed by the applicant-defendant seeking direction that the Tin-sheet allegedly erected by the plaintiff-respondent be removed and he be directed not to fix it on the property pending appeal and for further injunction restraining him to do so.

3. The order of the lower appellate court shows that both the parties were declared to be joint owners

of City Survey No.1954 as described in para 1(b) of the plaint. It was further directed that the plaintiff and defendants were equally restrained from erecting any structure in this disputed portion in the suit property and if the defendant had made any construction in this portion, the same was directed to be removed within the given time from the date of the appeal and if failed, the plaintiff is entitled to remove it with the help of the Court.

4. On this, it is submitted that the defendant had not erected any structure on the property as on 9.12.1997 i.e. the date of the suit. The appellant defendant has come with the case that the plaintiff had erected some Tin-sheet on the said property, in respect of this some photographs shown to this court. The learned counsel for the respondent denies that the respondent had erected any Tin sheet or shed on the suit property. Hence it is hereby directed that the appellant would be liberty to remove the tin structure, if standing today on the suit property i.e. City Survey No.1954. The plaintiff respondent in that case shall not obstruct such removal of the said structure by the appellant-defendant and to that extent the application

is made absolute in terms of prayer clause (b). If any dispute arises the appellant is at liberty to move the trial court to execute the decree passed by the trial court in respect of clause (b) of this application. With this direction the application is disposed of with no order as to costs.